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SPEECH OF HON. JAMES HARLAN,

OF IOWA,

IN THE SENATE OF THE UNITED STATES,

MARCH 27, 1856.

The Senate, as in Committee of the Whole, having under consideration the Bill to authorize the people of Kansas to form a Constitution and State Government preparatory to their admission into the Union—

Mr. HARLAN said:

Mr. PRESIDENT: I engage in the discussion of the general subject, which, it seems to me, lies at the foundation of the varying opinions on Kansas affairs which have been expressed hitherto by other Senators on the floor of the Senate, with reluctance and embarrassment. The relation I sustain to this body, the most august on earth, is a new one—the subject is one of overwhelming magnitude—and I am surrounded by a disappointed Senate and a crowded gallery, who have been convened, by his high reputation for ability, to listen to the honorable Senator from Vermont, [Mr. COLLAMER,] in reply to the honorable Senator from Illinois, [Mr. DOUGLAS.] But, sir, I nevertheless proceed, under a conviction that I shall never, probably, be less in the way than on the present occasion.

Before, however, proceeding to this debate, it is no more than just to myself that I should say that, although so long the theme of earnest discussion *in* and *out* of Congress, I have never hitherto attempted or desired to make a speech on the perplexing subject of African Slavery as it exists in the United States. I had supposed its discussion useless, mischievous, and even dangerous to the perpetuity of the Union.

But, sitting here in this Chamber, I find there are those who do not regard the discussion of this subject as dangerous to the continuance of this union of States. The highest officer known to the Constitution seems to entertain no such fears. Early in the session, and in advance of the organization of the House of Representatives, two voluminous State papers were laid before Congress and the country by the Chief Magistrate of the nation, in which this question is elaborately discussed: *Historically*—commencing with the origin of the Government, and proceeding through all its varying vicissitudes, up to the date of these messages: *Judicially*—portraying the *constitutional* relations of Slavery to Freedom, of the slave States to the free States in the Federal Union, and of all the States to the common Territories: *Politically*—placing his *friends all* on the side of *justice* and *law*, of the Constitution and of the Union; and his political *opponents all* in the *wrong*, in company with those who are said to be *plotting treason against the Government under which they live*. Since which, a third message, in obedience to a resolution of this body, and numerous official papers from Kansas, out of which the opinions of the President and his friends have probably been in part formed, have been sent to the Senate, eliciting the warm approval of those who undertake to speak for him on this floor. And, lastly, the Senate and the country have been favored with a very voluminous report from the Committee on Territories, followed by a long and labored speech of its chairman, the honorable Senator from Illinois, [Mr. DOUGLAS,] sustaining the opinions of the President.

Congress may not now, therefore, avoid the discussion of this subject without a manifestation of great disrespect for the Chief Magistrate of the nation, and his friends and supporters.

But in casting aside my previous prejudices against "agitation," and in following the President through these elaborate State papers, I find their whole tenor and spirit at war with the impressions made on my mind by my previous historical, political, and legal reading. The representations made by these Kansas papers now under immediate consideration, including the majority report of the Committee on Territories, are, as I think, perverted, partial, and highly colored.

I do not propose to enter into a general review of all these facts; but that large bodies of men from an adjoining State *did* enter Kansas for the avowed purpose of controlling her elections, and by false swearing in some districts, and by intimidation and force in others, (with guns, and knives, and revolvers, driving away the officers of elections and Free State voters when necessary for that purpose,) *did* deposit votes in sufficient numbers to determine the character of her first Legislature; that this legislature, thus elected by perjury, and I

violence, and fraud, *did* enact laws for the establishment of Slavery, with severe and unusual penalties, violating freedom of speech and of the press; and, to secure the execution of these odious laws among an outraged people, *did* appoint local officers, from the number of their own friends, to serve (not for three, or six, or nine months, until the people could be called together at the polls to elect them, but contrary to all precedent) for periods of from two to five years; and that all the difficulties in this Territory—the war, the arson, the carnage and bloodshed—have been occasioned by a persevering effort on the part of armed bands of men, residing out of the Territory, *to compel* the people to acquiesce in the consummation of this high-handed outrage on their rights as freemen, is a part of the history of the country which *no amount of learning, no strength of logic*, and *no fire of eloquence, can ever obliterate.* Honorable Senators may rise in their places and significantly inquire, as they inquired of the honorable Senator from Massachusetts a few days since, for the authorities on which these statements are made.

I respond by inquiring for the *authority* of the world's conviction that Louis Napoleon was elevated to the throne of his imperial uncle "by force and fraud." Every lip curled with scorn when it was officially announced to the nations that the people of France had voted almost unanimously in favor of the "empire." Everybody knew that this gigantic fraud was secured by the influence of a secret police, the threat of the guillotine, and the arms of the imperial guards, who hovered around the polls. But who could prove this by other than oral testimony and newspaper articles, which honorable Senators here treat with such contempt? None. Just so in the election frauds of Kansas—its only parallel for audacity in the world's history! And here, sir, allow me to say that I have been somewhat astonished to find that the newspapers of England are in higher repute in the American Senate than the public journals of their own country. Honorable Senators complacently quote from the newspapers of Great Britain—from the London *Times* and *Telegraph*, and others—on a different subject, without rebuke, without a *sneer*, without an expression of *scorn* from other Senators; but when Senators refer to newspapers of their own country, published in a given locality, to sustain historical facts transpiring around them, they are treated with derision. How is this? I desire to know, sir, if, in the opinion of this Senate, a despotism is more favorable to newspaper veracity than a republic?

But, Mr. President, oral testimony and newspaper statements are sometimes very significant. Let any one converse with the people of western Missouri, and of western Iowa, as I have done—having the honor to represent, in part, that State on this floor for the time being—and with the people of Nebraska, and the people of Kansas herself, and read the newspaper articles on both sides of this controverted subject, and they will ascertain this singular condition of facts: that the Free State men and the Free State papers all charge the perjury, the force, the usurpation, and the fraud, to which I have alluded, and charge them to condemn, whilst the Pro-Slavery citizens of those various localities and the Pro-Slavery papers admit the force, admit the usurpation, but seek to justify it. They say this was all necessary for the purpose of protecting the institution of Slavery in the State of Missouri. There is no denial by them of the leading facts connected with this controversy; and if these facts are doubted or called in question by their friends on this floor, it will be received by them as no compliment; for they wear the success which has hitherto attended the part they have performed in the settlement of the institutions of Kansas, as the tallest plume in their crown of honor.

They first resolved that Kansas should become a slave State; to secure this, it was necessary to elect a Pro-Slavery Legislature, and they marched over and elected one; deliberately using enough force to secure this result. In obedience to their will, this Legislature extended over the Territory the slave laws of Missouri, and elected officers among their friends to enforce these laws. And it is for the purpose of *compelling* the people of Kansas to recognise *as legal*, a Legislature which they never elected—as *valid*, laws which they never aided *to enact*—to obey local officers for whom none of them ever voted—that the President has ordered out the United States troops in that Territory. It never has been pretended, and is not now pretended, that the people of Kansas have ever refused to obey laws enacted by Congress, or to respect process issuing from the courts of the United States in the hands of the duly-appointed marshals.

But, Mr. President, to compel the people of Kansas to obey these laws, thus made without their sanction, is to establish Slavery in this Territory by the strong arm of the Federal Government—"squatter sovereignty" to the contrary notwithstanding—not peacefully by Congress in these Halls, but by the President, at the head of our armies. But, believing Congress (if competent) a more desirable tribunal for the establishment of great questions of State than armed men on the battle-field, I ask the indulgence of the Senate while I inquire—

1. *Whether the Congress of the United States has power to exclude Slavery from her Territories.*

2. *Whether this power ought to be exercised in the organization of Territorial Governments where Slavery did not previously exist.*

In support of these propositions, I desire to cite, *first*, the declaratory acts of Congress following each acquisition of territory by the United States.

In the year 1784, previous to the adoption of the Constitution of the United States, Virginia ceded to the Confederacy all of her territory lying northwest of the Ohio river. All other States claiming any interest in this territory made a similar conveyance, with a few comparatively unimportant reservations. This was the first, and comprised all the territory owned by the Confederacy.

In the year 1787, an Ordinance was adopted by the thirteen old States, containing a provision styled, "*Articles of compact between the original States and the people and States in the Northwest*

'*Territory*," which, unless changed by mutual consent, was "*to remain unalterable forever*." This compact provides that

"There shall be neither Slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted."

This was the act of the thirteen sovereign States, while held together by Articles of Confederation. It had all the moral force of a regular treaty between independent nations. It was in form a mere "law of Congress," subject to repeal or modification at the will of the majority; but had all the moral elements of a "compact," *a bargain*, concluded, signed, and sealed, between high contracting parties—unchangeable in its very nature, without the consent of *all* the parties in interest. And thus it was published and acquiesced in by the people of all the States and Territories. None were then found to complain of the restriction, and to demand "the right to carry their property" in men and women into these Territories. So completely contented were all the original States, North and South, with this settlement of our Territorial policy, that in the formation of the Constitution of the United States, adopted in the year 1789, conferring on the central Government all the essential elements of nationality, nothing is said on this subject, only that

"The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States."

The *government* of the Territories is not even named. This had been provided for by the Ordinance of 1787, a provision older than the Constitution, which remained unchanged.

By an act passed at the First Congress, the Ordinance was modified, and declared to be in full force; and to its provisions all the subsequent legislation of Congress quietly conformed for more than thirty years.

I am aware that an objection to the conclusiveness of this declaratory act of Congress has been urged with great ability by the honorable Senator from Georgia, [Mr. TOOMBS,] on this floor, a few days since, and also in a speech recently delivered by him in Boston. That I may do him no injustice, I read from the latter, because in it I think his views are represented with more clearness, precision, and strength, than in his recent impromptu reply to the honorable Senator from New Hampshire, [Mr. HALE.] He says:

"From these facts it is clear that this legislation for the Northwest Territory does not conflict with the principle I assert, and does not furnish a precedent for hostile legislation by Congress against Slavery in the Territories. That such was neither the principle nor the policy upon which this act of Congress in 1789 was based, is further shown by the subsequent action of the same Congress upon the same subject. On the 2d of April, 1790, Congress, by a formal act, accepted the cession by North Carolina of her Western lands, (now the State of Tennessee,) with this clause in the deed of cession: 'That no regulations made, or to be made, by Congress, shall tend to emancipate slaves' in the ceded Territory; and on the 26th May, 1790, passed a Territorial bill for the government of all the territory claimed by the United States, south of the Ohio river. The description of this territory included all the lands ceded by North Carolina, and it included a great deal more. Its boundaries were left indefinite, because there were conflicting claims to all the rest of the territory. But this act put the whole country south of the Ohio, claimed by the Federal Government, under this Pro-Slavery clause of the North Carolina deed. The whole action of the First Congress in relation to Slavery in the Territories is simply this: it acquiesced in a Government for the Northwest Territory, based upon a pre-existing Anti-Slavery Ordinance, established a Government for the country ceded by North Carolina in conformity with the Pro-Slavery clause in her deed of cession, and extended this Pro-Slavery clause to all the rest of the territory claimed by the United States. This legislation vindicates the First Congress from all imputation of having established the precedent claimed by the advocates of legislative exclusion. On the 7th of April, 1798, (during the administration of President John Adams,) the next Territorial act was passed; it was the first act of Territorial legislation resting solely upon primary, original, unfettered, constitutional power over the subject. It established a Government over the Territory included within the boundaries of a line drawn due east from the mouth of the Yazoo river to the Chatahoochee river, thence down that river to the thirty-first degree of north latitude, thence west on that line to the Mississippi, then up that river to the beginning. This Territory was within the boundary of the United States, as defined by the treaty of Paris, and was held not to be within the boundary of any of the States. The controversy arose out of this state of facts.

"The charter of Georgia limited her boundary in the south by the Altamaha river. In 1763, (after the surrender of her charter,) her limits were extended on the south, by the Crown of Great Britain, to the St. Mary's river, and thence on the thirty-first parallel of latitude to the Mississippi river. In 1764, it was claimed, that on the recommendation of the Board of Trade, the boundary was again altered, and that portion of territory lying within the boundaries I have described was annexed to West Florida, and that thus it stood at the Revolution and treaty of peace. Therefore, the United States claimed it as common property, and in 1798 passed the act now under review for its government. In that act, Congress neither claimed nor exercised any power to prohibit Slavery. The question came directly before it—the Ordinance of 1787, in terms, excluding the Anti-Slavery clause, was applied to this Territory. This is a precedent directly in point, and is directly against the exercise of the power now claimed. In 1802, Georgia ceded her Western lands, protecting Slavery in her grant, and the Federal Government observed the stipulation."

The honorable Senator argues against the con-

clusiveness of the Ordinance of 1787, as a legislative precedent, by citing the organic law passed in 1790, for the territory south of the Ohio river, to which the clause of this Ordinance excluding Slavery was not applied; and, also, the organic law of the Territory of Mississippi, approved in 1798, to which all this Ordinance was applied in *terms*, except the clause excluding Slavery.

To this I reply, that the act of 1790, although general, applied practically only to the Territory ceded by North Carolina—now the State of Tennessee. Tennessee was an inhabited country. As early as 1785, she had made an effort to secure a separate State organization. The relation of master and slave had previously been established under the laws of North Carolina; who, in her deed of cession, had stipulated that Congress should enact no law emancipating slaves in the ceded Territory. This in no way conflicts with the Ordinance of 1787, which prohibited the *introduction* of Slavery into *new Territories* under the unrestricted control of Congress.

The same was substantially true of the Territory of Mississippi, organized in 1798. It was all claimed as a part of Georgia, whose boundary, by virtue of her charter granted in 1732, extended to the Mississippi river. In point of fact, however, the settlements on this river were under the control of France until 1763, when they were formally ceded to Great Britain, and thus continued until 1783, when all north of the thirty-first degree of north latitude became, by treaty, the property of the United States, over which Georgia asserted her previous rights. Slavery had been established; the application of that clause of the Ordinance which says, "there shall 'be neither Slavery nor involuntary servitude in 'the said Territory," would have been to *abolish* Slavery, and not simply to prevent its establishment.

In the acquisition of Louisiana in 1803, and of the Floridas in 1819, the jurisdiction of the United States was extended over vast territories in which Slavery then existed by virtue of French and Spanish laws. The right of the people to hold slaves in these provinces, it was supposed, had become vested, and was not unsettled by the treaties conveying them to our Government. Hence, Slavery was silently suffered to exist in that part of these Territories in the actual occupancy of slave property. Congress enacted no law on the subject. Here it was neither approved nor discarded. But in the enactment of the Missouri Compromise, in the year 1820, Congress provided that neither Slavery nor involuntary servitude should ever be permitted north of thirty-six degrees and thirty minutes. The principles of the Ordinance of 1787 were extended over the territories now embraced within the limits of Iowa, Minnesota, Kansas, and Nebraska—then mostly uninhabited. From the history of these transactions, the conclusion is irresistible, that Congress intended that all of the immense territories ceded by France and Spain to this Government, not in the occupancy of slave-holding communities, should remain forever free; and here our Territorial policy again rested for about a quarter of a century.

In the "joint resolution," passed by Congress in the year 1845, "for annexing Texas to the United States," it was provided that

"New States of convenient size, not exceeding 'four in number, in addition to said State of Texas, 'and having sufficient populations, may hereafter, 'and by the consent of said States, be formed out 'of the territory thereof, which shall be entitled 'to admission under the provisions of the Federal 'Constitution. And such States as may be formed 'out of that portion of said territory lying south 'of 36° 30′ north latitude, commonly known as 'the Missouri Compromise line, shall be admitted 'into the Union with or without Slavery, as the 'people of each State asking admission may 'desire. And in such State or States as shall be 'formed out of said territory north of said 'Missouri Compromise line, Slavery or involuntary servitude (except for crime) shall be pro 'hibited."

In the event of the division of this vast domain of Texas, it was provided that one or more of these four new States should be absolutely free, and that all the remaining States thus formed might be admitted as free States, should the people desire it. And here again the subject rested until the year 1850.

But in the adjustment of the difficulties growing out of the acquisition of large territories from Mexico, as trophies of war, Territorial Governments were established for Utah and New Mexico, with a conditional provision for each:

"That when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union with or without Slavery, 'as their Constitution may prescribe at the time 'of their admission."

Here, for the first time, the Territorial policy of the Government, settled and uniform for nearly three quarters of a century, was changed. All the machinery of the ship of State here began to revolve in a different direction. The Northwest Territory, now embraced within the limits of five large and powerful States, was originally *slave territory*, by virtue of the laws of Virginia, (and other slave States ceding it to the Union,) as much so as the Territory of Kentucky, once held as a part of her dominions. But, by the Ordinance of 1787, it was all dedicated to Freedom.

The territory now embraced within the limits of Iowa, Minnesota, Nebraska, and Kansas, was doubtless *slave territory*, by virtue of French and Spanish laws. But by the enactment of the Missouri Compromise it was dedicated to Freedom.

All the vast domain of Texas was, without dispute, slave territory, by virtue of her own laws, enacted and enforced during her nationality. But, by the legislation of Congress admitting her into the Union, a large part of this, too, is prospectively dedicated to Freedom. But the Territories of New Mexico and Utah were, by virtue of Mexican laws, ABSOLUTELY FREE, when, by the legislation of the Congress of the United States, they were thrown open to Slavery.

But this revulsion in the Territorial policy of the Government in 1850; this conditional conversion of free territory to the uses of Slavery, in violation of the settled policy of the country,

growing out of what had been supposed to be "the compromises of the Constitution," and in violation of the moral feelings and clear convictions of right of an overwhelming majority of the American people, was secured, not by denying the power of Congress to exclude Slavery, but in the name of *concession* and *compromise*, and as a *condition* for the admission of California *without Slavery*, although *previously free* by force of Mexican laws, and by virtue of *her own Constitution* at the time of her application—in connection with the enactment of laws for the modification of the boundary of the State of Texas, the abolition of the *slave trade* in the District of Columbia, and the return of fugitives from labor.

The passage of these organic laws for Utah and New Mexico completed the settlement of the question of Slavery in all the Territories of the United States. Slavery was not prohibited in Utah and New Mexico by the laws of Congress; but in all that vast region, including Minnesota, Kansas, Nebraska, Oregon, and Washington, Slavery *was* still prohibited. This adjustment, obtained through the influence of such men as Clay and Webster—now passed to their final reward—and men that I see around me, with the legislative experience of half a century crowning their brows, was said to be final. Reposing confidence in the wisdom and patriotism of statesmen who had stood firmly by their country's flag and the Constitution during the darkest hours of our national history—who had been defenders of their homes and their rights while the majority of them were still in their mothers' arms, the people peaceably, though in many instances restlessly and reluctantly, acquiesced in this supposed "finality." The admission of Slavery into Utah and New Mexico was not claimed as a constitutional right; it was asked as an element of compromise. No one is sufficiently reckless to pretend that the Compromise Measures of 1850 could have received the approval of Congress, much less of the people, with the understanding that this enactment opened all the Territories of the Union to the occupancy of slaveholding communities.

In support of the proposition stated, I desire, in the second place, to cite the legislation of Congress in the organization of Territorial Governments and in the admission of States formed out of territory previously free.

From these citations (I remark, in passing) it will be seen that the President is in error when he says, in his annual message, in relation to the prohibition of Slavery in the Northwest Territory by the Ordinance of 1787, that

"Subsequent to the Constitution, this provision 'ceased to remain as a law, for its operation was 'absolutely superseded by the Constitution."

In the year 1789, the very first Congress convened under the provisions of the Constitution passed a law transferring certain duties imposed by this Ordinance on Congress to the President of the United States, (as is expressly stated in the preamble to this law:)

"In order that the Ordinance of the United 'States in Congress assembled for the government of the Territory northwest of the river Ohio 'may continue to have full effect."—(*Statutes at Large*, vol. 1, p. 50.)

In the year 1800, Congress declared, in the organic law of the Territory of Indiana,

"That there shall be established within said 'Territory a Government in all respects similar to 'that provided by the Ordinance of Congress passed on the 13th day of July, 1787, for the government of the Territory of the United States northwest of the river Ohio; and the inhabitants 'shall be entitled to and enjoy all and singular 'the rights, privileges, and advantages, granted 'and secured to the people by the said Ordinance."—(*Statutes at Large*, vol. 2, p. 59.)

In 1802, (April 30,) Congress passed a law to enable the people of Ohio to form a State Constitution, in which it is provided that said Constitution shall not "be repugnant to the Ordinance of the 13th July, 1787, between the original States and the people and States of the Territory northwest of the river Ohio."—(*Statutes at Large*, vol. 2, p. 174.)

In 1809 (February 3,) Congress incorporated the same provision in the organic law of Illinois that was made a part of the organic law of Indiana.—(*Statutes at Large*, vol. 2, p. 515.)

In 1805, the same provision was made in the organic law of Michigan.—(*Statutes at Large*, vol. 2, p. 309.)

In the year 1816, (April 19,) Congress passed a law authorizing the people of Indiana to form a State Constitution, in which it is provided

"That the same, whenever formed, shall be republican, and not repugnant to those articles of 'the Ordinance of the 13th of July, 1787, which 'are declared to be irrevocable between the original States and the people and States of the 'Territories northwest of the Ohio river."—(*Statutes at Large*, vol. 3, p. 290.)

In 1816, (December 11,) Congress passed a resolution declaring, among other things, that "whereas the Constitution formed by the people 'of the Territory of Indiana is republican, and in 'conformity with the provisions of the Ordinance" above recited, "the said State is admitted into the Union."—(*Statutes at Large*, vol. 3, p. 399.)

In 1818, Congress authorized the people of Illinois to form a State Constitution, conditioned that it should conform to the provisions of the Ordinance of 1787.—(*Statutes at Large* vol. 3, p. 430.)

On December 3, 1818, Illinois was by resolution admitted into the Union as a sovereign State, on the ground that her Constitution, thus formed, did conform to the provisions of the Ordinance of 1787.—(*Statutes at Large*, vol. 3, p. 536.)

In the year 1820, as we have before stated, Congress declared, in the law providing for the admission of Missouri into the Union,

"That in all that territory ceded by France to 'the United States, under the name of Louisiana, 'which lies north of thirty-six degrees and thirty 'minutes, not included within the limits of the 'State contemplated by this act, *Slavery* and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall 'have been duly convicted, shall be, and is here-

'by, forever prohibited."—(*Statutes at Large*, vol. 3, p. 548.)

In 1836, in the passage of the organic law of the Territory of Wisconsin, which embraced what is now the States of Wisconsin and Iowa and the Territory of Minnesota, Congress again extended and applied the provisions of the Ordinance of 1787 to an immense country beyond the limits of the Northwest Territory.—(*Statutes at Large*, vol. 5, p. 15.)

In 1838, Congress again endorsed this Ordinance of 1787, in the passage of the organic law of Iowa, by extending to the people of this Territory "all the privileges, rights, and immunities, hitherto enjoyed by the people of Wisconsin."—(*Statutes at Large*, vol. 5, p. 239.)

In 1845, Congress declared, (as we have before stated,) in the act providing for the admission of Texas as a member of the Union, that Slavery should be prohibited in any State or States thereafter to be formed out of the territory north of the Missouri Compromise line established in 1820.—(*Statutes at Large*, vol. 5, p. 798.)

In 1848, (March 3,) Congress extended the provisions of the Ordinance of 1787 to all the territory of the United States west of the Rocky Mountains, north of the forty-second degree of north latitude, known as the Territory of Oregon, in the following words:

"*And be it further enacted*, That the inhabitants 'of said Territory shall be entitled to enjoy all 'and singular the rights, privileges, and advan-'tages, granted and secured to the people of the 'Territory of the United States northwest of the 'river Ohio, by the articles of compact contained 'in the Ordinance for the government of said Ter-'ritory, on the 13th of July, 1787; and shall be 'subject to all the conditions, and restrictions, 'and prohibitions, in said articles of compact 'imposed upon the people of said Territory."—(*Statutes at Large*, vol. 9, p. 329.)

This embraced both Oregon and Washington Territories. In 1849, the same provision enacted in regard to Iowa was incorporated into the organic law of Minnesota.—(*Statutes at Large*, vol. 9, p. 407.)

But all this mass of consecutive legislation, except the act of 1820, is ignored by the President. He tells us that this provision of the Ordinance of 1787 ceased to remain as a law, being *absolutely superseded by the Constitution*. It is unfortunate for the correctness of this statement, that the Statutes at Large of the United States have been published from session to session by authority of Congress, and scattered broadcast over these States; it is unfortunate for its credence, that so many millions of the freemen of this Republic can read plain English!

But the honorable Senator from Georgia takes precisely the opposite tack. He denies the position of the President, and says that this Ordinance

"Purported on its face to be a perpetual com-'pact between the State of Virginia, the people 'of the Territories, and the then Government of 'the United States. It was unalterable except by 'all the parties. The division of that Territory 'was provided for in the Ordinance; at each 'division, the whole of the Ordinance was ap-'plied to each of its parts. Congress did not 'assert or exercise the right to alter a compact 'entered into with the former Government, (the 'old Confederation,) but gave its assent to the 'Government already established, and provided 'for in the compact. If the original compact 'was void for want of power in the old Govern-'ment to make it, as Mr. Madison supposed, Con-'gress may not have been bound to accept it—it 'certainly had no power to alter it."

The honorable Senator from Georgia arrives at an erroneous conclusion, only because his premises are untrue. This Ordinance does not purport on *its face* to be a compact between *Virginia* and the people of the Territories, and the United States, but a "compact between *the original States*, and the people and States in the said '*Territory*." Virginia was no party to the bargain, "on its face;" nor were the people and States in said Territories contracting parties. There were no States in the said Territory; the people had no organization; they had no power to bargain until after the Ordinance was passed; and the Ordinance bears the signature of no representative of Virginia, nor of the Territory—and of no one but "William Grayson, chairman" of Congress, and "Charles Thompson, Secretary." In other words, it was a law of the United States, passed in the usual form, containing a solemn declaration of the future policy of the Government on the subject of Slavery in her Territories. It was no more irrepealable than the Missouri Compromise. Like the latter, it had all the moral elements of a perpetual covenant; but, legally, "it was a mere law of Congress;" and that, too, of a Congress under the Confederation, with fewer elements of sovereignty, with less power to bind the individual States, than is now possessed by Congress under the Constitution. Hence, if Congress had the power to repeal the Missouri *Compromise*, which literally means an agreement, a bargain, a "compact," it had the power to repeal the *Compromise* of 1787. They were both declaratory acts of Congress—nothing more. The veracity and honor of the nation were at stake. She had solemnly declared that Slavery should not be permitted in the Northwest Territory; and that in the Louisiana Territory north of 36° 30′ Slavery should be *forever* prohibited. This was the voice of the supreme power of the United States, spoken in the presence of the enlightened nations of the earth. But it was "a nude compact"—it bound no one but herself. If she chose to violate her plighted faith with her own citizens, and to stand a giant liar among the nations, she doubtless had the power.

But be this as it may, these legislative precedents are not confined to subdivisions of the Northwest Territory. They have constantly followed the progress of population in the free territory. It was first applied to Ohio; when the tide of population rolled across the Miami, it was applied to Indiana; when it crossed the Wabash, it was applied to Illinois; when it surged up to the Northern lakes, it was applied to Michigan; when it hugged the western shore of the lakes up to the British possessions, and dashed across

the great Father of Waters, it was applied to Wisconsin, including Iowa and Minnesota, both of which were beyond the boundaries of the Northwest Territory; and when it overleaped the Rocky Mountains, this great vertebral column of the world, it was applied to Oregon and Washington, bounded by the Pacific Ocean. These consecutive legislative precedents, commencing in 1787, and continuing to 1854, stand unimpeached and unimpeachable by any conclusive reasoning.

I observe, in the third place, *there is no adverse decision of the Supreme Court.*

In 1854, Congress repealed the Missouri Compromise, on the ground of its unconstitutionality. The power of Congress to exclude Slavery from the Territories was then for the first time denied.

The President has also declared these laws to be unconstitutional. He says, on the subject of the organization of the Territories of Utah and New Mexico:

"In the councils of Congress, there were manifested extreme differences of opinion and action between some Representatives, who desired the unconstitutional employment of the legislative powers of the Government to interfere in the condition of the inchoate States, and to impose their own social theories upon the latter, and other Representatives, who repelled the interposition of the General Government in this respect, and maintained the self-controlling rights of the States.

"Once more the Constitution of the United States triumphed signally; the new Territories were organized without restrictions upon the disputed point, and were thus left to judge in that particular for themselves."

Those who desired Congress to exclude Slavery from the Territories were said "to desire the exercise of unconstitutional power;" and when Congress enacts laws throwing open territory, before free, to the occupancy of Slavery, he tells us "that the Constitution of the Union triumphed signally."

But, Mr. President, I desire here to inquire whence the President of the United States derived the power to adjudicate the constitutionality of laws which had previously passed through all the usual forms of legislation? I had supposed that such adjudications more fitly belonged to another department of the Government. The framers of the Constitution originally conferred this power on the Supreme Court.

Under the Constitution, Congress may enact laws, the *courts* may adjudicate them, and the President may execute them. These three departments of the Government should remain distinct, because their union forms a despotism.

But if neither the President nor Congress may expound the laws without a usurpation of powers never conferred by the Constitution, I inquire for the opinions of the Judiciary on which the declarations of the President and of Congress are based. For if these laws were in fact unconstitutional, it would be strange if none of the courts of the country, State or National, in all the complicated adjudication that has arisen since 1789, have had occasion to pronounce them void. The President pronounces these laws unconstitutional. Senators say they were unconstitutional. Congress repealed the Missouri Compromise because it was unconstitutional; and all who opposed this repeal are denounced as enemies to the Constitution. And yet the *courts*, the only *constitutional* tribunals on earth that have the right to adjudicate such questions, have never, I believe, even intimated such an opinion!

If I am in error in this, let old and experienced Senators here, whose knowledge must be perfect on this subject, correct me. Does no one answer? I hear no reply. Then I infer there are no such decisions, well authenticated, of any court of the country, State or National. Then, sir, what becomes of these charges of "treason against the Constitution and the Union," so liberally fulminated against the opponents of Slavery in Kansas? Before I am condemned as an enemy of my country, as a political traitor to her fundamental law, I desire to know that some court of competent jurisdiction has decided that my opinions are in conflict with the Constitution.

I will not detain the Senate with the presentation of judicial opinions sustaining the constitutionality of the uniform legislation of Congress, which I have cited. The honorable Senator from Illinois [Mr. TRUMBULL] discussed this point to some extent a few days since. It is not necessary for my argument; for the entire absence of any judicial opinion, State or National, in conflict with the constitutionality of these laws, in all the adjudication that has arisen during nearly seventy years, amounts to a negative pregnant, as potent in its convincing efficacy as the most elaborate adjudication.

In the next place, I argue the existence of power in the Congress of the United States to legislate on the subject of Slavery in the Territories, from the relation which they sustain to the Government.

In each of the States of the Union, the power of the General Government is restricted. Here the sovereignty is divided between the State and the United States. The powers of the United States are all derived from the State; but the powers of Congress in the Territories are not thus derived from a local Government—the order is reversed, and the Territorial Government derives all its powers from the Government of the United States.

The Government of the United States acquired all her rights in the Northwest Territory, not by grant of all the old thirteen States through the Constitution, but by deed from Virginia; in the Territory of Tennessee, from North Carolina; in the Southwest Territory, including Mississippi and Alabama, from Georgia and Great Britain; in the Floridas, from Spain; in the Louisiana Territory, from France. The United States was the successor of each of these; and it is a well-settled principle of national law, that whatever the original sovereign of each of these might have done within its limits, while a part of his dominions, might be done by his successor.

Prior to the year 1803, I suppose, full, complete, and exclusive sovereignty in the Louisiana Territory (including Kansas and Nebraska) was vested in France. The Government of the United

States, by a direct purchase, succeeded to all the rights and sovereignty originally possessed by the grantor: and hence became the actual, full, complete, and exclusive sovereign of the Territory. I suppose no one of the old thirteen States ever had any right, title, claim, or interest, in or to any part of the Louisiana Territory. No one of them had ever exercised any jurisdiction over it. It was a part of the dominions of France; she was its absolute sovereign. Hence the Government of the United States must have succeeded to the same unrestricted rights, and may hold, exercise, and enjoy them, until she chooses to confer them on another sovereignty. If France, previous to the cession, could have excluded Slavery from Kansas and Nebraska, this Government may do so now, subject only to the provision in the Constitution which says that Congress may make all *needful* rules and regulations respecting the Territories. The *necessity* of every rule and regulation is a fit subject for legislative discretion, for the exercise of which Congress is responsible to the people of the whole country, and not to the people of any individual State.

I will not here stop to argue the question of the constitutional right of the United States to acquire foreign territory. Mr. Jefferson and others have doubted the existence of this power under the Constitution. But with the power to *acquire* must follow the right to *govern*.

I argue the power of Congress to exclude Slavery from the common Territories, from the undisputed right to pass the Kansas-Nebraska act, conferring on the people "the right to regulate their own domestic institutions in their own way."

If Congress had no power under the Constitution to regulate the domestic institutions of Kansas—to regulate the rights of person and of property—it could not confer this right on the people of the Territory. The grantor cannot convey rights and prerogatives which he never possessed. The grantee can never take more than the grantor himself held. It is absurd to suppose Congress capable of transferring to the people of Kansas rights, and privileges, and prerogatives, which Congress never possessed. The grant is worthless, if the original holder had no title. Hence the advocates of "squatter sovereignty" are driven to admit that all the rights, and privileges, and power, of the Territorial Legislature of Kansas, were previously vested in the Government of the United States. But if this Government originally possessed the right to legislate for this Territory, and has since intrusted its exercise to a local Legislature, she is still responsible. The *principal* is responsible for the acts of the *agent* within the limits of his instructions. What a man does by an *agent*, he does by himself. Hence, what this *Government* does by another, she does by herself. What she does by the "spurious" Legislature of Kansas, is *her own act*. The real sovereign can never avoid the responsibility of governing, by interposing a subordinate. Hence, these Kansas laws, enacted by her "Rump" Legislature, establishing Slavery, appointing officers for a period of from two to five years, abridging "freedom of speech and of the press," and making it a penal offence to deny the validity of such laws, *are the laws of Congress*. By recognising them, and suffering the President to enforce them, you make them your own.

This conclusion can only be avoided by supposing Congress to have transferred this sovereignty to the people of the Territory, without reservation—*without the right of review and repeal*. But if this right to make all local laws regulating the relations of husband and wife, parent and child, guardian and ward, master and slave, as well as the rights of person and property, was transferred absolutely, and irrevocably vested in the people of the Territories of Kansas and Nebraska by the law of 1854, *Congress in that act created two States*. Something less than a sovereign might interpret and apply *a law*, something less than a sovereign might enforce its provisions; but nothing less than "the supreme power in a State" can *make* a law. If, then, the people of Kansas have power, under the Constitution of the United States, to legislate on all fit subjects of legislation, as perfectly as Virginia, or Iowa, or New York, independent of Congress, SHE IS NOW A STATE!—and she became a State the moment this supreme power to make all needful laws was conferred.

It may be said, however, that these organic laws do not *confer* power on the Territorial Legislatures; that they are merely declaratory of "great principles of government;" that the right to govern is inherent in the people; that it is not the subject of transfer; that it is an inalienable right; that it follows American citizens wherever they may go within the jurisdiction of the United States; that the right of self-government, held as citizens of a State, is carried by the people to the Territories; that it is never lost; that to take it away is an act of despotism.

But this does not change the conclusion. It matters not *whence* the power is derived—whether from Congress or from nature; whether from the Government of the United States or from JEHOVAH! Does the power to make all needful laws exist in the Territory? Is it absolutely vested in the people of Kansas? You say in the Kansas-Nebraska act that it is thus vested; and being so vested, that Congress is released from all responsibility growing out of the character of these laws. But if the people of Kansas have the absolute right to make all needful laws for their own government, they may create offices and fill them; they may establish courts, appoint judges and executive officers. The power to make laws, without the power to interpret and apply them, is worthless. The power to make and adjudicate laws, without the power to execute, is perfectly nugatory. It is a mere pretence—a shadow—a name—a mockery.

The appointment of a temporary Governor, and judges, and marshals, to put the machinery of State in motion, may have been well; but when these utterly fail to effect the object of their appointment, and bring about anarchy and civil war, the people—*if sovereign, clothed with the supreme power of a State*, the power to make all needful laws—would be unworthy the honor of the American name, should they neglect to provide for themselves. And it is marvellous that the

authors of the Kansas-Nebraska act—the authors of the doctrine of squatter sovereignty in Kansas—should complain that her people have organized a State Government. As well might the old heathen deity, whose prolific brain gave birth to a Minerva, when confronted by his own offspring, complain that he had created a god.

But if Kansas is *not a State*—if she *does not* possess the power to make laws, which is defined to be "the *supreme* power in a State"—if this right of self-government *was not* carried by the people from the States to this Territory—and if Congress *did not* confer on the people of Kansas the right to enact all needful laws, and to regulate their own domestic institutions in their own way—if the squatters *are not sovereign*—then this supreme power must be vested in the Government of the United States. Her will, legitimately expressed, is the law. She has the full and complete power, in legislating for her Territories, "to command what is right, and to prohibit what is wrong."

The power of Congress to exclude Slavery from all the Territories of the United States, not embraced within the limits of any State, being established or conceded, I inquire, secondly, *whether this power ought to be exercised in the establishment of Territorial Governments where Slavery did not previously exist.*

In the discussion of this proposition, I desire to probe the subject to the core. I prefer to brush away the surface rubbish, and to lay the foundations of the superstructure on the solid rock.

1. Is Slavery right? Is it in accordance with the principles of natural justice? The time has been, when very few in the country defended the *moral right* of one man to hold another in perpetual bondage. Its continuance hitherto has been defended by citing the difficulties that surrounded the question of emancipation. But the passage of the Kansas-Nebraska law has wrought a sad change, I fear, in the moral tone and temper of this discussion. Members of Congress now tell you that the enslavement of the African race by the Anglo-Saxon is no evil; that it is a blessing; that it is the natural condition of the two races; that an enlightened philanthropy requires the enslavement of the African; that he belongs to an inferior race; that he cannot endure the shock of contact with his superiors; that annihilation or servitude is the only alternative.

As the African is presented to my mind by the traveller and the historian, and by my personal observation, I am compelled to admit the *inferiority;* but, if the right of the Anglo-Saxon to enslave him depends on his manifest *inferiority*, it becomes the duty of every Senator to examine closly the *nature* of that inferiority. Is it the result of the enslavement of his ancestry for more than a thousand years, *or is it a natural, specific difference, developed in an analysis of the elementary laws of matter and of mind?*

In laying the foundations of new States, this problem is worthy of the careful attention of the proudest and wisest statesman on the floor of the American Senate; for in its solution he legislates, by its influence, for the whole human race—not only for the one thousand millions of people that now live, but for these teeming millions, as they shall continue to come and go while time shall last.

That each may arrive at a correct decision of the *nature of the admitted inferiority of the African* to the Anglo-Saxon, I request Senators to allow me to refer them to their early elementary reading—to a succinct view of this subject, derived from standard writers on physical, mental, and moral science—from such works as are used in colleges, academies, and seminaries of learning, all over the country—such works as are placed in the hands of the student of law, of medicine, and of theology.

Physiologists tell us that there is no *specific* difference in the physical structure of the two races; that the solid parts of their bodies are constituted of the same number of bones and joints, similarly located and distributed; that there is not a muscle, or tendon, or ligament, or vein, or artery, or secretion, or absorbent, or nerve of motion or of volition, found in the organism of one, that does not exist in the other; that each possesses the same senses of sight, of touch, of taste, of smelling, and of hearing; that each possesses the same specific means of mastication, digestion, and procreation. There are, however physical differences. The skin of one is black—of the other, white; the hair of one, fine and knotted—of the other, coarse and straight; the lips of the one, thick and protruding—of the other, thin and compressed; and the perspiratory exhalations of the one are said to be more odorous than of the other. But these are all said to be but superficial *modifications* of the same specific faculties and functions. No specific organ has been omitted or added.

We are told, by writers on mental science, that the natural sensibilities are aroused in both by the use of the same organs; that the African and Anglo-Saxon alike experience pleasure in the mastication of food, in the inhalation of fragrant odors, in the exercise of the sense of touch, in gazing at the beauties of creation, and in listening to the melody and harmony of sounds; that the same sounds, and colors, and motions, and heights, and depths, and expanses, and manifestations of power, that elevate the feelings of one to a key of grandeur or sublimity, overwhelm the other with kindred emotions. They tell us that in each they find the same specific desires, instincts, appetites, and passions; that each may love, and hope, and fear, and hate—may be envious, jealous, and revengeful; that in each they discover the faculty of perception, of conception, of memory, of imagination, of belief, and of will; that each experiences paternal, fraternal, and filial affection; that each experiences emotions of humanity, of patriotism, and of piety.

From this physical and mental analysis, it will be perceived that each organ may be *weaker* in one race than in the other; but that in other respects they do not materially differ. The anatomy of the one is the anatomy of the other; the mental science that describes the laws of mind of the one, delineates the spiritual nature of the other; the moral philosophy that analyzes the moral emotions of the one, reveals the moral fac-

ulties of the other. All the laws of health and culture applicable to the one, are applicable to the other. The same physician that prescribes for the African slave in his hovel, on a bed of straw, prescribes with equal success for his master, in a stately mansion, on a couch of down. The same minister of righteousness who soothes the sorrows and assuages the griefs and energizes the hopes of the slave, when the shadows of death hover around him, administers with equal success the consolations of the same Gospel to the man of whiter skin.

The manifest inferiority of the African to the Anglo-Saxon does not consist in a generic or specific difference. It is that kind of inferiority which, doubtless, the enlightened statesman would expect to find among the descendants of those who had been doomed to absolute servitude, from time immemorial. His body is less symmetrical; his face less beautiful; his appetites, passions, instincts, and desires, less manageable; his perceptions less acute; his conceptions, less clear; his memory, consciousness, belief, powers of reasoning and will, more feeble; his love of parents, of offspring, of man, of country, of truth, of honor, of justice, and of God, less reliable. But is any one of these absent? If so, what element of manhood has been omitted? None; not one!

But if "he is inferior to the white man" in this sense—if his body *is* weak, his mind feeble, his moral sensibilities obtuse—does that confer the right on the man of strong body, of vigorous intellect, and of acute moral sensibilities, to *seize*, *overawe*, and *enslave* him? Is it *might* that determines the right? Because you have the *power*, may you of *right* enslave your fellow-men? Is this the voice of Northern gallantry and of Southern chivalry?

It might do for Louis Napoleon, as he sits on a usurped throne, to claim the *right*, because he has the *power*, to control the destinies of other men. It might do for Alexander, the Czar of Russia, as he sits enthroned where the old Wizard of the North spirited away the liberties of Europe, to make *might* the measure of *right*. But will it do for the *American Senate* to endorse and defend this doctrine of tyrants, discarded by our fathers—to place *this country*, in the eyes of the civilized nations, on the platform of the despots of the Old World, which has so long been the object of our ridicule and scorn? If not, you must return to the doctrine of the fathers of the Republic, and defend the weak against the aggression of the resolute and powerful. It will not do to deny the privilege of Freedom to all who are your inferiors in physical, mental, and moral strength. Adopt this doctrine, and the Anglo-Saxon must proceed to enslave the world; for he is now, doubtless, the strongest race on the globe.

This modern doctrine of Kansas Democracy—the right of the *strong* to enslave the *weak*—is at war with the original reason for civil society. He who is able to defend his own rights and to avenge his own wrongs needs not the interposition of the strong arm of the law for his protection; but to defend the weak and to protect the defenceless is the imperative duty of the State.—Sir, may I interpret that smile of an honorable Senator? Is it the satisfied spirit contemplating great political truths, that thus illuminates a dignified countenance? or does it bear the tinge of a *sneer?* Is it the Senatorial mode of discarding fundamental truths as "mere abstractions?" Am I thus told that "such political abstractions might do in the original formation of society," but that the system of Slavery has long since been established, and that it cannot now be *suddenly* removed without danger to the welfare of the slave, as well as the safety of the master? If *this* be the purport of that *meaning* smile, its truth is granted. I believe it, every word. Its truth is conceded by the mass of the people of the North and of the West. The difficulty of the immediate emancipation of large bodies of slaves, in States where it has been long established, is as fully understood and as freely admitted by the people of the free States as by the people of the slave States.

But, sir, this is not a mere abstraction, when applied to Kansas. There, the question is a new one. You go there, not to defend old institutions, but to organize society—to lay the foundations of a republic *de novo*. There, you are free from every embarrassment attending the question of emancipation in the old States. You go there, in advance of organized society, to plant the pillars of a State, where *your will is supreme*—where you may either approve or prohibit Slavery, as your hearts may prompt and your consciences approve.

Then, if my argument is conclusive as an *abstraction*, it is equally conclusive when applied to the practical question of the introduction of Slavery into all the Territories of this Union where it has not previously existed. If the oppression of the weak by the strong is wrong in the first organization of civil society, and should be prohibited by law, it should be prohibited in Kansas, in Nebraska, in Utah, and in New Mexico, as it was prohibited in the Northwest Territory, and as it is now prohibited in Minnesota and Oregon. It should be prohibited wherever you go to lay the foundations of a State—to build up a new republic.

There is an apology for the existence of Slavery in the old thirteen States. When they were severed from Great Britain, they inherited the institution of Slavery. You found it pre-existing in the Territories of Louisiana and the Floridas. You acquired it with Texas, in her reception into the Union. But it was not acquired with Utah and New Mexico. And, in 1854, it had no practical existence north of 36° 30′ in any of your Territories. In the great unoccupied Northwest, this institution was no part of your inheritance. There it can have no existence, unless planted and sustained by the strong arm of this Government. I will close this point of the discussion by quoting an opinion of Hon. John McLean, one of the Justices of the Supreme Court of the United States. When interrogated on this subject, this learned jurist said:

"Without the sanction of law, Slavery can no
' more exist in a Territory than a man can breathe
' without air. Slaves are not property, where

'they are not made so by municipal law. The 'Legislature of a Territory can exercise no power 'which is not conferred on it by act of Congress."

If Congress has power to prohibit Slavery in all of her Territories, if natural justice requires its prohibition wherever the question is unembarrassed by its pre-existence under local legislation, it should be prohibited in Kansas without delay. There are imperative reasons for the immediate action of Congress, growing out of the peculiar circumstances of its introduction and protection in that Territory. In its introduction, violence has attended it at every step—the right to the peaceful exercise of the elective franchise has been violently overthrown—freedom of speech and of the press has been ingloriously trampled under foot—legislation has become a mockery—the towns of Kansas have been besieged by belligerent armies—her plains have been stained by the blood of her murdered citizens—the widows' wail and the orphans' moan over slaughtered husbands and fathers have driven the Goddess of Liberty from her temples, while the armies of the United States are compelling her freemen to lick the dust at the feet of usurpers. It was *introduced by violence*, and is *sustained by force*.

Nor has Congress any assurance that this war is ended. The people of Missouri are secretly marshalling their forces for the conflict. They have resolved to continue Slavery in the Territory by force. The shadow of the arm of the General Government may be used for this purpose; but the propelling power is in Western Missouri. The people there seem to be laboring under the strange delusion, that the safety of their slaves would be greatly endangered by the re-establishment of Freedom in Kansas, not reflecting that Iowa bounds her on the north by an open line. No Chinese wall separates these sister States. The people of both States live by each other in peace and quiet. No fears seem to be entertained that the people of Iowa will steal their slaves. But a strange infatuation seems to have seized them in regard to the people of Kansas; as if the more direct route to Canada were by the Rocky Mountains.

The people of western Missouri are not alone; the people of the Southern States are contributing allies—they are sending men and money to defend Slavery in Kansas. The people of the Northern States are marshalling opposing armies for the same field of strife. Shall Congress sit idly here, and await the result of the shock of arms—if, indeed, that shall happen—until a fraction of the people of this great nation shall settle a great question of State policy, on the battle-field, in human gore? It is useless to denounce the people of Kansas as traitors to the Union, for discarding the spurious laws of a spurious Legislature. It will be vain to attempt to produce peace and quiet, by compelling freemen to submit to laws which they never sanctioned. The *will* of a freeman will not so easily bend.

But Congress can settle these disturbances in a single day, either by suffering Kansas to become a State, in pursuance of "*the true intent and meaning*" of the organic act that conferred on the people "the right to regulate their own institutions in their own way," or by amending this organic act so as to exclude Slavery from the Territory. And I fear it can be settled peacefully in no other mode; for it is now clear, that if the citizens of Kansas should finally succeed in triumphing over all opposing influences—force, fraud, perjury, spurious legislation, and I fear I may safely add, the influence of this Administration—and exclude Slavery by a direct vote, they have no assurance of peace and quiet; for the same statesmen that deny the power of Congress to exclude Slavery from the Territories, also deny the power of the Territorial Legislature to exclude this species of property. They tell us that such legislation by Congress and by Territorial Legislatures is alike unconstitutional and void; that slaveholders have the right to take their slaves into any and all of the Territories purchased by the common blood and treasure; that the Constitution guaranties this right, and that *all* laws excluding them are in bad faith.

Hence this "squatter sovereignty" doctrine, which declares that "the people of a Territory shall be left free to regulate their own institutions in their own way, is a fraud on the free States. When properly understood, it means that the people may establish Slavery in the Territories if they choose, and that they shall be compelled to do so if they refuse! Nothing more—nothing less. It has been introduced into Kansas by force, and is now defended by the armies of this Government. And the country is distinctly notified, that if this defence of Slavery in the Territories should be discontinued, that the Union of these States shall be dissolved.

The honorable Senator from South Carolina, [Mr. BUTLER]—justly admired for his great talents, and venerated for his candor and integrity—a few days since, in a very able speech then delivered on this subject on the floor of the Senate, made the impressive and startling declaration, "That he wished to be understood—he did not 'speak rashly—his words were measured—but 'unless the equality of the States could be pre-'served in Territorial legislation, he would advise 'the people of South Carolina to go out of the 'Union." This may not be the exact wording of the Senator's proposition, but it does no violence to the sense. He said "deliberately," (and called the Senate to note the deliberation)—"with measured words"—"that unless the equality of the States could be preserved in Territorial legislation, he would advise the people of South Carolina to go out of the Union.'

The character of that "equality" which must be maintained for the States, to prevent a dissolution of the Union by the Southern States, is more elaborately expressed by the honorable Senator from Georgia, [Mr. TOOMBS.] That I may not seem to do him injustice, I quote first from his recent speech delivered in the Senate. He says:

"We intend that the actual *bona fide* settlers of 'Kansas shall be protected in the full exercise of 'all the rights of freemen; that, unawed and uncontrolled, they shall freely and of their own 'will legislate for themselves to every extent allowed by the Constitution, while they have a 'Territorial Government; and when they shall be

'in a condition to come into the Union, and may 'desire it, that they shall come into the Union 'with whatever republican Constitution they may 'prefer and adopt for themselves; that in the ex- 'ercise of these rights they shall be protected 'against insurrection from within, and invasion 'from without. The rights are accorded to 'them without any reference to the result, and 'will be maintained, in my opinion, by the South 'and the North."

Again:

"I know that many gentlemen with whom I 'have corresponded, and from whom I have other- 'wise heard, in western Missouri, General Atch- 'ison among them, asked for nothing more. 'They simply demand that the actual settlers 'who go to that country shall have a fair oppor- 'tunity to establish those domestic institutions 'which they may think proper. General Atch- 'ison took this ground in the Senate. I am 'very sure he stands upon it now."

Again:

"Against all these conflicting efforts and opin- 'ions, the friends of the Constitution, justice, and 'equality, have hitherto held, and will continue 'to hold, the scales of justice even and unshaken. 'We still tell all the joint owners of this public 'domain to enter and enjoy it, both in the North 'and the South, with property of every sort; ex- 'ercise the full powers of American freemen; leg- 'islate for yourselves to any and every extent, 'and upon any and every subject allowed by our 'common Constitution: the Federal Government 'will protect you against all who attempt to dis- 'turb you in the exercise of these invaluable 'rights; and when you have become powerful 'and strong enough to bear the burdens, and de- 'sire it, we will admit you into the family of sove- 'reigns, without reference to your opinions and 'your action upon African Slavery. Decide that 'question for yourselves, and we will sustain 'your decision, because it is your right to make 'it. This is the policy of the Kansas bill; it 'wrongs no man—no section of our common 'country."

But this is the pleasant spicing to an unpleasant dish. It is a kind of sophistry which deceives by its apparent fairness, and which is so finely expressed as to create a desire to leave its beauty unmarred. But how is its logic affected by the following, from the honorable Senator's Boston speech?

"The constitutional construction of this point 'by the South works no wrong to any portion of 'the Republic, to no sound rules of construction, 'and promotes the declared purposes of the Con- 'stitution. We simply propose that the common 'Territories be left open to the common enjoy- 'ment of all the people of the United States, that 'they shall be protected in their persons and 'property by the Federal Government until its 'authority is superseded by a State Constitution; 'and then we propose that the character of the 'domestic institutions of the new State be de- 'termined by the freemen thereof. This is just- 'ice—this is constitutional equality."

Here, sir, what I have shown to be true, as a logical sequence from the denial of power in *Congress* to exclude Slavery from the Territories, is distinctly avowed. The honorable Senator from Georgia [Mr. Toombs] declares this to be "the constitutional construction of this point by the South." He says:

"We still tell all the joint-owners of this pub- 'lic domain to enter and enjoy it, both in the 'North and in the South, with property of *every* 'sort." "That, unawed and uncontrolled, they 'shall freely, and of their own will, legislate for 'themselves to every extent allowed by the Con- 'stitution, *while they have a Territorial Govern- 'ment*."

But the "construction" of their "constitutional" powers "by the South," he tells us, is: "That the common Territories be *left open* to the 'common enjoyment of all the people of the United 'States," "with their property of *every sort*;" that this *property* shall be *protected* "by the Federal 'Government, until *its* authority is superseded by 'a *State Constitution*;" and that *then*, not *before*, "the domestic institutions of the *new State* may 'be determined by the freemen thereof." Yes, sir, this is "the *equality* of the States," which, we are gravely told by able Southern Senators, "in measured words," that must be preserved in the national Territories, if you would perpetuate the Union. You must continue Slavery in all the Territories, and protect it by the strong arm of the Federal Government as long as these Territorial Governments continue, or the honorable Senator from South Carolina [Mr. Butler] will advise the people of that State to dissolve the Union.

From this we may readily infer why those who have resolved to make Kansas a slave State will resist her admission into the Union until her population shall have reached ninety-three thousand. Slavery is to be continued by force as long as the Territorial Government lasts; but when that is superseded by a State Government, her people are to have the gracious privilege of determining for themselves the character of their domestic institutions! This is a feature of "self-government" for Kansas, which the people of the North and of the West have not hitherto fully understood. They supposed their free sons, though poor in worldly wealth, might go to Kansas with nothing but hard hands, with strong arms, with sane minds, and with honest hearts, and by their own votes settle the question of Slavery at once and forever. But in this they were grievously deceived. The *equality* claimed by Southern States requires that Slavery shall *continue*, and receive the protection of the strong arm of the Federal Government, in all the common Territories, until superseded by State Governments; that then they may abolish it or continue it, at discretion. This is the equality tendered to the North; this is the equality claimed by the South—the use and occupancy of all your Territories by slaveholding communities during the entire period of the continuance of Territorial Governments! This modest demand sounds to my ear very much like the claim of the lion's share. And men are denounced on the floor of the Senate as fanatics, as disunionists, as Black Republicans, and as traitors to the Government, who discard such a

construction of the great *charter of Freedom*—the Constitution of the United States.

Sir, it is apparent to the least observant, that if you establish Slavery in Kansas, and defend it with the armies of the nation, as you are now doing, until her population shall reach ninety-three thousand, it will have become so firmly established, and so deeply rooted and interwoven with the frame-work of society, as to render its removal a practical impossibility; as much so as it now is in Missouri, Kentucky, or Louisiana. Slavery has never been removed from any one of the new States admitted into the Union.

Mr. President, this "equality of States" in the Territories, which permits and defends Slavery in *all of the Territories*, crumbles under a careful analysis, as readily as the doctrine of "squatter sovereignty." The doctrine, "that the people of 'all the States may enjoy the common Territo-'ries, with their property of *every sort*, as a band 'of brothers, until their pupilage is terminated by 'a State Government, and that then they may 'frame such institutions as they desire," seems so plausible in fact, and so beautiful in theory, as to almost palsy the tongue and bewilder the brain of him who disputes its truth. Nothing was ever more false, that seemed so fair. The establishment and continuance of Slavery in the Territories not only predetermines the question for the future States, but it violates the very equality which it pretends to foster and protect.

The millions of hardy laborers of the North and Northwest will not live in a slaveholding community. I need not answer "why?" A thousand reasons are on their tongues. To you it may seem to be the result of a sickly sentimentalism. To them their conclusions seem to be the result of the clearest reasoning, sustained by the strongest sense of moral duty. If, then, you establish Slavery in the Territories, you *exclude* them from the enjoyment of this common heritage. The thousands and tens of thousands of men and women of the free North who migrate to the West are laborers. Many of them go to your new Territories with no capital except industrious habits, strong arms, generous hearts, and lofty purposes. They go to form new communities and a new society, where *labor is honorable*: where he who is too proud to work is discarded; where he who refuses, by his own toil, to add something to the solid capital of the country, is disgraced; where the industrious, the vigilant, and the frugal, are honored and promoted; where, in time, nearly all live in their own houses, cultivate their own soil, and run their own machinery. They live on a common platform of equality, because all are willing to labor for a living. Such men will never so degrade themselves as to labor in the fields, side by side, with Southern slaves.

Establish Slavery in the common Territories, and you exclude the working men of the North; prohibit Slavery in the Territories, and you exclude slaveholders. Which is the greater "inequality?" The white population of the United States was reported by the officers of the Government in 1850 at about twenty millions; the number of slaveholders, at less than *one quarter of a million*. If this be true, the enactment of laws excluding Slavery from the Territories would deprive less than a quarter of a million of the citizens of the country of the right to hold a species of property there, which nineteen millions seven hundred and fifty thousand of their fellow-countrymen discard. Nineteen and three fourths millions of the people of the United States may still go to Kansas with their "property of every kind." The quarter of a million may go on equal terms. To make room for the *slaves* of the one quarter of a million, you are required to exclude the free millions of the North; for, by establishing Slavery in the Territories, you practically exclude free laborers, who are too proud to become the companions of slaves. Is this right? Is it just? Is that constitutional equality?

For myself, sir, I am free to admit that I am one of the number practically excluded. I esteem it no disgrace to say, sir, in the Senate of the United States, that from childhood I have been taught to labor. The sweat of my brow has been my only capital. I have been required to fulfill the edict pronounced by the Almighty, in the original formation of the human family, "that by the sweat of his brow he shall earn his bread."

On a platform of equality, I have never been disposed to shrink from an honorable competition with the most favored in life's ever-recurring conflicts; but, sir, I never will, by act or vote of mine, place myself in a condition to struggle for position in social life with those *whose slaves* are the companions of my daily toils. If I would not thus stultify myself, I will not thus wrong my child. I would be equally pleased to see him compete, in the school-room, at the black-board, in the lecture-room, on the rostrum, in the field, or in the shop, with the son of the Southerner as well as the son of the Northerner. But, sir, I never could feel a father's pride in witnessing his struggles for position in the polite circles, while I had, by vote of mine, made him the companion of slaves at his daily labor. Rather than see him reduced to a practical inequality of this kind, I would prefer to see his eyes plucked out and given to the eagles, and his heart snatched out and given to the vultures. Place him on a platform of equality—let him labor in the same sphere, with the same chances of success and promotion—let the contest be exactly equal between him and others; and if, in the conflict of mind with mind, he should sink beneath the billow, let him perish!—but by no vote or act of mine will I give him an unequal battle. If I could not thus wrong my own child, I will not, as a Senator representing in part one of the States of this Union, by any official act of mine, either exclude her free citizens from the enjoyment of our common Territories, or place them in companionship with the field-hands of Southern planters.

It is this claim of Southern statesmen to the use of *all* the Territories for slaveholding communities, that is upheaving the elements of society, and dissolving old parties, North and West. The cry of Black Republicanism, nor the threat to dissolve the Union, will stay the swelling wave. The cry of Abolitionism will be equally impotent.

"Abolitionist," with its *original* meaning, was exceedingly odious in the North and West, as well as South. When it meant an officious intermeddling of the people of one State with the domestic affairs of another—when it was said to mean social equality and amalgamation of the two races, there were but few to approve it; and I, sir, was never one of that number. While I saw no generic distinction between the two races, it has always seemed to me that something was due to the common instincts, affinities, and decencies of life; all of which were so flagrantly violated by the great Democratic party, in 1836, by elevating a practical amalgamationist to the second office in the gift of the nation, and again in 1840, by attempting to repeat the outrage. I never acted with such a party; I never consulted them, advised with them, nor voted for them. I have always defended the right of the people of the Southern States "to regulate their own domestic institutions in their own way." But, sir, I claim an equal right for the people of the *whole country*, by their representatives in Congress, to regulate the domestic institutions of all the Territories belonging to the United States. This is constitutional equality, as I understand it. Let each State control its own domestic affairs, within its own jurisdiction; and let Congress control the domestic affairs of the nation, wherever her sovereignty is unrestricted by an existing State Government. And I shall not be deterred from the defence of this position by the cry of Abolitionism.

And now, Mr. President, I conclude these desultory remarks by recapitulating the argument. I conclude that the Congress of the United States has power to prohibit Slavery in the Territories of the United States—

1. Because Congress has exercised this power by declaratory acts following the acquisition of the Northwest Territory, the Louisiana Territory, the State of Texas, and Oregon.

2. Because Congress has prohibited Slavery in the organization of Territorial Governments, and in the admission of States formed out of all territory where Slavery did not previously exist, embracing all that vast country north of the Ohio river and 36° 30′ of north latitude, extending from the eastern line of Ohio to the Pacific Ocean—embracing a period of time commencing with 1787, and reaching to 1850.

3. Because there is not on record, in all the adjudication of all the courts of the country, State and National, extending from the foundation of the Government to the present moment, a single adverse decision.

4. Because, in the acquisition of the Territories, the Government of the United States acquired full, complete, and exclusive sovereignty over them, as the successor of the sovereigns from whom they were procured, of which she cannot divest herself until she transfers this sovereignty to State Governments.

5. Because this power is indirectly asserted in the Kansas-Nebraska act, conferring on the people of the Territories the power to legislate on all suitable subjects of legislation, and to regulate their own domestic institutions in their own way—since a power could never be transferred, which was not previously held by Congress.

Secondly, I conclude that this power ought to be exercised in the organization of Territorial Governments where Slavery did not previously exist—

1. Because natural justice, as interpreted by the fathers of the Republic, demands it.

2. Because the supposed or real inferiority of the African race increases instead of diminishes the obligations of civil society to protect him from the oppression of the strong and powerful.

3. Because equality among the people of all the States requires it: the permission of Slavery in the Territories practically excluding an overwhelming majority of the American people from their occupancy.

4. Because the peace and quiet of the Territories requires that this, and all great questions of State, should be settled by the supreme legislature.

And, lastly, because its speedy exercise seems to be the only means for restoring to the people of Kansas the rights of freemen, of which they have been deprived by violence.

WASHINGTON, D. C.

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1856.

TO THE OPPONENTS OF SLAVERY-EXTENSION.

A Presidential Canvass of unusual significance is about to open—one of which the result must go far to determine whether Liberty or Slavery is to be the polestar of our National course—whether the vast unpeopled regions, confided by Providence to our keeping, shall be subdued and cultivated by intelligent, happy freemen, or by lashed and blinded slaves. It is most important that the true bearings of this contest be set forth and diffused, not in the heat of the struggle, after every one shall have taken his position and resolved to maintain it, but now, while the popular mind is measurably calm and unprejudiced. In view of these considerations, the National Publishing Committee have issued, and will continue from time to time to publish, the most important Speeches and Essays which have appeared and shall appear on the side of Free Labor and Human Rights, which, we trust, those who love the cause will purchase for gratuitous circulation among their friends and neighbors, with an eye to the struggle before us.

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